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No. 82-567

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

Howard A. Williams and Shirley Jo Williams,
Appellants,

V.

Cheetwood & Davies, Attorneys at Law
Appellees,

APPEAL FROM WOOD COUNTY COURT OF APPEALS JURISDICTIONAL STATEMENT

Howard A. & Shirley Jo Williams
Appellants Acting Pro Se
15236 Mitchell Road
Bowling Green, Ohio 43402

R. Nigel Davies
Counsel of Record
for Appellees
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Bowling Green, Ohio 43402

QUESTIONS PRESENTED BY THE APPEAL

1. Whether both the trial court and the appellate court violated Title 28 U.S.C. §1654 and the First Amendment to the United States Constitution concerning freedom of speech and redress of grievances by refusing to acknowledge the question of attorney's right to be paid for fraudulent representation. Many material facts supporting this argument were included in the *Memorandum in Opposition to Motion for Summary Judgment.* The Wood County Court of Appeals agreed with the trial court that the issue was not one of fraudulent representation, but "whether appellants owed appellee money on account for fees for legal services rendered."

2. Whether both the trial court and the appellate court ignored the proper application of Ohio and Federal Civil Rule 24 in refusing the intervention of Diane Lynn Williams and the United States Constitutional effects thereof.

3. Whether Ohio Civil Rule 56 is repugnant to the due process of law clause in the United States Constitution.

4. Whether Title 15 U.S.C. §1673 was violated by the garnishment of wages in Shirley Jo Williams' checking account after an *Affidavit and Order in Garnishment (non-wages)* was filed.

LIST OF ALL PARTIES

Parties Plaintiff-Appellee
Cheetwood & Davies, Attorneys at Law

Parties Defendant-Appellant
Howard A. Williams
Shirley Jo Williams

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Pursuant to Rules 12(1), 12(3), and 15 of the Rules of the Supreme Court of the United States, appellants Howard A. and Shirley Jo Williams, file this statement of the bases upon which it is contended that the Supreme Court of the United States has jurisdiction to review the *Decision and Journal Entry* of the Wood County Court of Appeals in this case, and should exercise such jurisdiction herein.

OPINIONS OR ORDERS BELOW

The *Decision and Journal Entry* of the Wood County Court of Appeals concerning this case is unreported and unpublished. It is included herein as Appendix I-A and may be found on page A-1.

GROUNDS OF JURISDICTION OF SUPREME COURT

This appeal arises from the sustaining of a *Motion for Summary Judgment* made by the Plaintiffs in Bowling Green Municipal Court Case No. 80-CV-F-613. The *Decision and Journal Entry* of the Wood County Court of Appeals was filed of record on March 19, 1982. A timely notice of appeal was filed and appeal pursued to the Supreme Court of Ohio. The *Orders* of the Supreme Court of Ohio overruling the *Motion to Certify the Record,* the *Appeal as of Right,* and rehearing on the above were entered on June 16, 1981, June 16, 1982, and July 7, 1982 respectively. A timely *Notice of Appeal* was filed with the Wood County Court of Appeals on September 20, 1982.

The jurisdiction of this Court is invoked under the provisions of Title 28, United States Code, Section 1257, providing for the United States Supreme Court review of state court decisions. The cases which support jurisdiction of the Court include:

1. Cuyahoga River Power Co. v. Northern Realty Co. (1917) 244 US 300, 61 L Ed 1153, 37 S Ct. 643
2. Cohen v. California (1971) 403 US 15, 29 L Ed 2d 284, 91 S Ct 1780, reh den 404 US 876, 30 L Ed 2d 124

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment of the United States Constitution

> Congress shall make no law ... abridging the freedom of speech ... and to petition the Government for a redress of grievances.

Fourteenth Amendment of the United States Constitution (Section 1)

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Civil Rule 24(B) (2)

> when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest.

Civil Rule 60(B)

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the

following reasons: (1) mistake, inadvertence, surprise or excusable neglect; ... (3) fraud (whether heretofore denominated intrinsic or extrinsic), mistrepresentation or other misconduct of an adverse party.

Civil Rule 56(C)

Summary judgment shall be rendered forthwith if the pleading, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case, and written stipulations of act, if any, timely filed in the action, show that there is *no genuine issue as to any material fact* and that the moving party is entitled to judgment as a matter of law.

A summary judgment shall not be rendered unless it appears from such evidence or stipulation and only therefrom, *that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made,* such party being entitled to have the evidence or stipulation construed most strongly in his favor.

Title 28, United States Code, §1654, Appearance Personally or by Counsel

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

Title 15, United States Code, §1673, Restriction on Garnishment — Maximum Allowable Garnishment

(a) Except as provided in subsection (b) of this section and in section 1675 of this title, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which is disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 206(a) (1) of Title 29 in effect at the time the earnings are payable.

whichever is less.

(c) No court of the United States or any State may make, execute, or enforce any order or process in violation of this section.

In Re Kokoszka, 479 F2d 990 (headnotes included herein; case located in Appendix V-A, pp. A-13)

12. Exemptions, 48(1)

The intent of the Consumer Credit Protection Act was to make sure that wage earners were able to receive at least 75% of their take home pay in any one pay period so that they would have enough cash to meet basic needs.

Title 28, United States Code Service, §1441, note 110, Garnishment, Attachment, Execution, Finn v. Rotating Valve Corp. (1938 DC NY) 25 F Supp 206

Action in aid of attachment is merely auxiliary to main suit and cannot be separately removed.

STATEMENT OF THE CASE

This suit was brought by Cheetwood & Davies, Attorneys at Law in the Bowling Green Municipal Court against Howard A. Williams and Shirley Jo Williams. The *Complaint* charged John S. Cheetwood was retained by Defendants in defense of an action known as James L. Smith, et. al., v. Howard Williams, et. al., being Case No. 78-CIV-340 in the Wood County Common Pleas Court and employed Plaintiff for various other matters including insurance on their swimming pool, soil removed from the right of way adjacent to their property, and approving an answer to a letter from a relative. It further charged he had accepted employment and duly performed all conditions of its part; therefore, he should be paid $7,036.80. The Defendants timely filed an *Answer* establishing the affirmative defense of fradulent representation.

The facts giving rise to this appeal can be simply stated. The question was whether an attorney who had acted in bad faith should be paid. The bad faith ranged from simple negligence in preparation of the pleadings for Case No. 78-CIV-340, to acting within a conspiracy to defraud his clients of their real property rights. The evidence presented by both the Plaintiff-Appellee and the Defendants-Appellants supported the Defendants' position of fraduluent representation. The allegations of collusion and consipracy between John S. Cheetwood, Rex Huffman, Martin L. Smith, and Donald D. Simmons were made in the *Answer*. They were reiterated in the *Memorandum in Opposition to Motion for Summary Judgment*. The detailed material facts were also enclosed in these documents to prove the truth of the allegations. For the trial court to have stated "the attorneys acted in good faith and find no proof of negilgence" is absurd.

The First Amendment to the United States Consti-

tution guarantees freedom of speech and the right to petition the government for a redress of grievances among the "inalienable rights" protected. Title 28, U.S.C. §1654 grants parties the right to represent themselves. These laws notwithstanding, the Court of William R. McMahon was prejudiced against laymen representing themselves. A pre-trial conference was held on April 15, 1981. Various pages of the pre-trial conference was held on April 15, 1981. Various pages of the pre-trial conference transcript exhibited Judge William R. McMahon's prejudice against the Williams' pro se representation including, but not limited to, pages 37-39, 41, and 43. During the pre-trial conference, Judge William R. McMahon suggested R. Nigel Davies file a *Motion for Leave to File Motion for Summary Judgment*. This also shows the Court's prejudice against pro se representation by laymen. Judge William R. McMahon was precluded from aiding laymen in self-representation; however, he told R. Nigel Davies how to proceed with his case against the Williams'. Judges are supposed to impartially decide cases based upon the evidence presented, not to aid one party in defeating the other.

In granting Plaintiff-Appellee's *Motion for Summary Judgment*, Judge William R. McMahon cited "mistakes made" by the Defendants as grounds for granting the *Summary Judgment*. These "mistakes" included the lack of sufficient affidavits. If the lack of affidavits precluded the Court from considering the Defendants' exhibits attached to the *Memorandum in Opposition to Motion for Summary Judgment*, the Plaintiff's own exhibits supported the Defendants' position. Both the trial court and the appellate court have acknowledged the proper form of the Plaintiff's evidence. If such evidence had been examined, the Court would have discovered a "conflict of interest" in the representation of the Williams' by John S. Cheet-

wood. While praising the "form" of the Plaintiff's exhibits, the courts have overlooked the "substance."

In early October, 1978, Howard and Shirley Jo Williams consulted John S. Cheetwood regarding a farm drainage problem. This was a simple, routine legal problem which should have been handled as an office procedure. Instead, John S. Cheetwood inflated it out of all proportion, manipulated it into court, and assisted Martin L. Smith into elongating it into a two and one-half day jury trial. A problem which should have cost the Defendant-Appellants approximately $200.00 to $300.00 became a $7,036.80 conflict, according to John S. Cheetwood's figures. Such action is fraud as defined by *Black's Law Dictionary*, page 594, Fraud, which states:

> "An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him or to surrender a legal right. A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury."

The Williams' relied upon John S. Cheetwood's lack of concern over this drainage problem. Howard Williams proceeded to remove the obstructions in the surface drains. He did this in the same manner, and by the same method, as he had done for over thirty years. This action resulted in a *Complaint* being filed against Howard and Shirley Jo Williams by James L. and Patricia A. (J). Smith. Mr. and Mrs. Smith were purchasing a portion of the farm frontage from its' original owner, Clark M. Young. Neither Mr. Young, nor his attorney, Lelan S. Middleton had made legal provisions for this drainage via a written easement, thus an implied easement arose. It can factually be proven John S. Cheet-

wood had knowledge of this drainage problem *before* James L. and Patricia A. (J.) Smith filed their *Complaint*. The Smith's were represented by James L. Smith's brother, Martin L. Smith. The *Complaint* was Case No. 78-CIV-340 in the Wood County Common Pleas Court. John S. Cheetwood had had prior knowledge of the drainage problem and adequate time in which to research the subject. He had offered the Williams' no solutions, no legal advise, and no concern regarding the reinstatement of the drains which had been obstructed by an employee of James L. Smith. He did not advise Howard Williams NOT to reinstate the surface drains. By removing the obstructions to the two surface drains, Howard Williams innocently walked into the trap which had been set for him!

The Williams' were faced with the first lawsuit of their lives. They retained John S. Cheetwood in "good faith" and expected professional representation from him. Instead, he made every mistake possible regarding Case No. 78-CIV-340. His mistakes began with the *Answer and Counterclaim*. Shirley Jo Williams insisted this pleading be rewritten as the original contained several ideas of pure fantasy.

John S. Cheetwood had eleven months to prepare for the trial of Case No. 78-CIV-340, yet he took his clients into court unprepared, and without an adequate, thorough, and professional case. The Williams' demand an explanation for this unprofessional behavior before they pay $7,036.80! By granting the *Motion for Summary Judgment,* Judge William R. McMahon has *suppressed* this knowledge. Without an open hearing, the Williams' will never know why they were victimized by an attorney.

There were numerous office conferences held between John S. Cheetwood, Shirley Jo Williams and Howard Williams between December 1, 1978 and October 1, 1979. At all of the conferences, their daughter,

Diane Lynn Williams was present. The Williams' presumed Diane was a party to this action since she was an active participant in these conferences. Diane Lynn Williams presumed John S. Cheetwood was representing her and her real property interests. He had drawn up Diane's deeds when her mother transferred two acres of the farm frontage containing the disputed water rights in Case No. 78-CIV-340. John S. Cheetwood knew about Diane Lynn Williams' real property drainage rights. He had also been informed of the subsurface drainage system and included it in the counterclaims of Case No. 78-CIV-340. This system began on Diane Lynn Williams' property and John S. Cheetwood was cognizant of this fact. Diane Lynn Williams was also involved in the minor issues of Case No. 80-CV-F-613 in that the dirt removed came from her property and the response to the letter concerned a building which she has used for the last ten years as her domicile. It was not until the April 15, 1981 pre-trial conference John S. Cheetwood denied representing her interests. Without representation by John S. Cheetwood and not allowed pro se representation, Diane Lynn Williams' property rights were confiscated without the benefit of the 14th Amendment to the United States Constitution guarantee of due process of law. Diane was denied "notice," as she was not named a party to Case No. 78-CIV-340; she was denied access to the courtroom; she was denied the opportunity to face her accusers; she was denied the opportunity to sit at the "bar;" and most of all, she was denied the "opportunity to be heard." The transcript of Case No. 78-CIV-340 will verify these statements. Diane Lynn Williams filed both a *Motion to Intervene* pursuant to Civil Rule 24 and a Civil Rule 60 (B) *Motion* for Relief of the Order denying intervention into Case No. 80-CV-613. Both of these *Motions* were summarily overruled. Diane Lynn Williams is in the unique position of having her proper-

ty rights taken away by an attorney and prevented from redressing her grievances in open court.

John S. Cheetwood should be held accountable for his negligence and fraud. By granting the *Motion for Summary Judgment,* Judge William R. McMahon has refused to acknowledge the important issue of fradulent representation. The appellate court sustained the trial court's refusal to view the issue of fradulent representation by stating: "the sole issue before the trial court was whether appellants owed appellee money on an account for fees for legal services rendered." The following is a brief summary of the material facts in support of the issue of fradulent representation in Case No. 78-CIV-340:

1. Shirley Jo Williams testified as a Plaintiff's witness, but not as a witness for her own case, thus incriminating herself and her case.

2. Diane Lynn Williams was "locked out" of Case No. 78-CIV-340, and her property rights confiscated without due process of law or the equal protection of the laws.

3. The composition of the jury was not impartial.

4. Time became very important after the beginning of the Defendants' case. Many subliminal references to time and "let's hurry up" were introduced into the Defendants' case by John S. Cheetwood, Martin L. Smith, and Donald D. Simmons.

5. John S. Cheetwood allowed slanderous attacks upon his clients reputation by the Plaintiffs, and their attorney, Martin L. Smith.

6. John S. Cheetwood permitted irrelevant and immaterial evidence to be presented by the Plaintiffs ruining Shirley Jo Williams' reputation.

7. John S. Cheetwood did not prepare an adequate case to take to trial.

8. John S. Cheetwood, although well-educated and experienced, did everything wrong once in the cour-

troom. A Duke University graduate could not present a simple multiplication problem to the jury.

9. The exhibits used by John S. Cheetwood were of extremely poor quality and the witnesses had difficulty seeing them.

10. John S. Cheetwood, defense counsel; Rex Huffman, defense counsel; and Martin L. Smith, plaintiffs' counsel, were all connected with the Wood County Prosecuting Attorneys' Office.

This list has been limited to these ten items for the sake of brevity; although many more could have been elicited.

It was not just trial preparation and trial activities where John S. Cheetwood did not render proper services. His unprofessional conduct continued through to the post-trial paper simply titled *Motions*. Item number 1 of that document stated:

> "To vacate the judgement which was rendered in conformity to the verdict of the jury and to render judgment in favor of the defendants notwithstanding the verdict for the reason that the defendants are entitled by law to judgment in their favor upon the evidence received at the trial."

While this was an excellent issue, it was *never* mentioned in the accompanying *Memorandum*. It became an idea without any supportive substance. The law and supporting case law were also conspicuously absent from this document. This law totally supported the Defendants' position, why was it not utilized? The paper presented to the court was in conformance with John S. Cheetwood's other work, weak and ineffectual. The Williams' cannot, in good conscience, pay for this obvious fradulent representation.

The 1968 Amendment to the Ohio Constitution granted rule making power to the Ohio Supreme Court. This rule making authority was abused when Civil Rule

56 was instituted. It abridges and violates the "due process of law" clause to the United States Constitution. Section 1 of the Fourteenth Amendment of the United States Constitution was ratified in 1868 and comprises a fundamental portion of our liberty and freedom in the United States. Any law or state constitutional amendment which abrogates those goals of freedom and due process of law should be declared unconstitutional and void.

Civil Rule 56 is construed so it may be manipulated by any party having enough influence with the judge. Judge William R. McMahon used only part of Civil Rule 56(C) in determining the summary judgment, while ignoring another part of that same rule. Judge William R. McMahon used the portion which states: "no genuine issue as to any material fact," while failing to recognize the portion which sttes: "reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for summary judgment is made." Considering the conduct of John S. Cheetwood outlined on the previous pages, reasonable minds could *not* come to the conclusion that he "had performed all conditions of its part" in "good faith." A conflict existed. John S. Cheetwood insisted he represented his clients competently. Howard and Shirley Jo Williams vehemently contended they were not represented properly, competently, or in "good faith." The excuse given for granting this summary judgment was "no genuine issue as to any material fact." The true reason for granting the summary judgment was to cover-up the fraud, collusion, and violations of state and federal law perpetrated in Case No. 78-CIV-340 by John S. Cheetwood and his fellow conspirators.

The effect of the *Summary Judgment* under Civil Rule 56 was to deny the defendants their "day in court", and "opportunity to be heard." These rights are protected under the 14th Amendment to the United States

Constitution. Civil Rule 56 was misused, abused, and manipulated for illegal and unjust purposes. The very concept of justice was violated by this rule and its current application. Any rule so subject to misuse and manipulation should be stricken from the books and declared unconstitutional.

On September 14, 1981, R. Nigel Davies obtained a *Court Order in Garnishment (non-wages)* from the Clerk of the Bowling Green Municipal Court. John S. Cheetwood's "alleged" attorney fees amounted to $7,036.80, plus $58.37 for court costs, making a total of $7,095.17.

R. Nigel Davies used the fraudulent *Summary Judgment* ruling of September 1, 1981 as the basis for the *Court Order in Garnishment — (non-wages).* The *Summary Judgment* ruling was fraudulent because the court refused to consider the material issue of fraudulent representation by John S. Cheetwood. By refusing to acknowledge this important material issue, Judge William R. McMahon permitted *Summary Judgment.* If there had been no *Summary Judgment,* R. Nigel Davies would not have had an excuse to *steal* monies "allegedly" owed his law partner and violate federal garnishment laws.

A copy of the *Court Order in Garnishment (non-wages)* was sent to the Mid-American National Bank & Trust Company. (Hereinafter Mid-Am). Shirley Jo Williams maintained checking account number 758-034 at Mid-Am. Howard Williams was employed by Henry Filters, Inc., Bowling Green, Ohio. A stipulation of his employment was to maintain an account with Mid-Am. The wages earned by Howard Williams from this employment was directly deposited into checking account number 578-034.

Acting under the authority of this *Court Order in Garnishment (non-wages)* Mid-Am proceeded to *strip all* of the monies contained in checking account number

578-034. This act occurred on September 15, 1981, and was accomplished via a cashier's check payable to Bowling Green Municipal Court. The sum removed was $1,325.84. This action was taken without warning or notice of any kind. This *stripping of the account* was a violation of 15 U.S.C. §1673, Restrictions on Garnishment and In Re Kokoszka, 479 F2d 990, because checking account number 578-034 contained *only wages.* Mid-Am violated a *Court Order in Garnishment (non-wages).* The Clerk of the Bowling Green Municipal Court violated the *Court Order* as he received and kept the $1,325.84.

Said monies were not returned to Shirley Jo Williams, or checking account number 578-034 at Mid-Am. This raid on the Williams' finances created a hardship at the time. Grocery money was not available until the following week's paycheck. Ohio's poor economy forced the lay-off of Howard Williams from Henry Filters, Inc. on December 4, 1981. This illegally obtained money, $1,325.84, would be useful in paying current bills – not fraudulent representation by an attorney.

The *Affidavit and Order in Garnishment (non-wages)* was fraudulent. Under it's terms, R. Nigel Davies stated under oath:

> "I ALSO MAKE OATH that no part of the personal earnings of the defendant are sought to be attached in this proceeding."

This oath was signed and dated. Personal earnings were attached because *only wages* were taken. Shirley Jo Williams' savings accounts at Mid-Am were left untouched!

Legal research revealed garnishment and attachment proceedings to be auxiliary to the main suit, thus not separately removable to federal court. (Finn v. Rotating Valve Corp., 25 F Supp 206). The *Court Order in Garnishment (non-wages)* cited Case No. 80-CV-F-613 in it's caption. The defendant-appellants thus

asserted it was a proper issue for appellate determination. If the *Court Order in Garnishment* (non-wages) was not separately removable, and not a portion of Case No. 80-CV-F-613; it certainly was a lonely little piece of paper with nowhere to go!

SUBSTANTIALITY OF FEDERAL QUESTIONS

This appeal presents important and substantial questions, as hereinafter described, in that thousands of lay people retain attorneys to solve legal problems every day. They have a right to expect their attorney will represent them competently, without regard of political pressures, and in "good faith." In the instant case, the attorney made pretense of representation, while conspiring with plaintiff's attorney, Martin L. Smith, to seize the Williams' property rights. Furthermore, this attorney sued his clients for his alleged fees and the Court refused to acknowledge the true issues of material fact. Judge William R. McMahon made a mockery out of the "open court concept." A *Summary Judgment* was granted against Howard A. and Shirley Jo Williams, preventing them from every having their "day in court" to make John S. Cheetwood responsible for his actions. Based upon the *Summary Judgment,* an *Order in Garnishment (non-wages)* was obtained and wrongfully executed. It is apparent from the proceeding that the Williams' were the injured party, not John S. Cheetwood. It is imperative that the United States Supreme Court review this case for proper disciplining of this wayward attorney.

The statute cited in support of jurisdiction in this Court is Title 28, United States Code, Section 1257. The cases supporting this jurisdiction are Cuyahoga River Power Co. v. Northern Realty Co. (1917) 244 US 300, and Cohen v. California (1971) 403 US 15. These cases were cited in support of the Wood County Court of Appeals being the highest court in which review could be

had. The Supreme Court of Ohio has refused jurisdiction in this case, thereby making the Appellate Court decision the final appealable order.

CONCLUSION

For the reasons stated above, defendant-appellants submit that this appeal brings before the Court substantial federal questions and federal constitutional issues which require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Dated October 1, 1982.

The defendant-appellants, acting pro se, hereby certify that they have prepared the foregoing *Jurisdictional Statement* on this 1st day of October, 1982, and that all statements are true and accurate to the best of their knowledge. This document is very respectfully submitted to the United States Supreme Court for its consideration.

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